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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054

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NOV - 5 1992

In the Matter of :

Revision of Part 22  
of the Commission's Rules  
Governing the  
Public Mobile Services

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 92-115

To: The Commission

REPLY COMMENTS OF PAGING NETWORK, INC.

PAGING NETWORK, INC.

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## SUMMARY

Paging Network, Inc. ("PageNet") concurs with comments submitted in this proceeding supporting the Commission's efforts to revise Part 22 of the rules. PageNet believes the revisions will, in most respects, reduce unnecessary burdens on the agency and its licensees and will foster the rapid, efficient provision of paging services to the public at the lowest cost. Along with many other commenters, PageNet supports key components of the proposals respecting automatic termination of licenses, implementation of a finders application procedure and streamlined processing of applications. In addition, it enthusiastically supports the Commission's proposal to adopt a first come, first served licensing approach.

As set forth in its Comments, PageNet avidly recommends that the Commission expand the geographic scope of its licensing scheme and adopt a system of market area licensing that reflects the realities of the modern paging industry and provides for its future development in the most spectrum efficient, cost effective and service-enhancing way. The Commission's ultimate goal of expediting service to the public will be maximally enhanced by area licensing which creates incentives for licensees to design, propose, build and operate systems when and where the market demands.

In some respects PageNet would modify the proposed rules and has so indicated here and/or in its Comments. Specifically, it believes (1) that the use of frequency-agile transmitters is in

the public interest and should be allowed; (2) that the conditions placed on licenses issued on the basis of certified engineering should terminate automatically in six months so as not to degrade the value and marketability of the license and to avoid placing continuity of service to the public at undue risk; (3) that de minimis moves of authorized facilities should be allowed on a notification basis; (4) that a facility should be deemed to have complied with the rules respecting completion of construction and commencement of service when it is capable of transmitting a page within a few minutes of its being sent; (5) that Form 489 notification should be required when a licensee decreases its composite service area contour; and (6) that any assignment of a mobile frequency for use on a base station transmitter must be on a primary basis.

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To: The Commission

REPLY COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, hereby submits its reply to the comments filed in the above-captioned proceeding. PageNet concurs with the majority of commenters who applaud the Commission's efforts to expedite the provision of service to the public and to ease the administrative burdens and costs which the current licensing scheme imposes on both carriers and the Commission. Further, PageNet believes that the Commission should evaluate and adopt certain proposals made by several of the carriers to improve its proposed regulatory scheme, particularly with respect to authorizing the use of frequency-agile transmitters, establishing a definitive standard as to what constitutes "commencement of service," and limiting the term of conditions placed on licenses issued on the basis of certified engineering. However, as set forth below, PageNet also believes that many of the commenters have failed to recognize the

significant public interest benefits of the Commission's proposed first come, first served licensing scheme, perhaps because of a short-sighted reluctance to step out of their current "comfort zone." PageNet firmly supports first come, first served licensing, and believes that this approach, combined with the market area licensing scheme outlined in PageNet's Comments, is crucial to the rational development of the paging industry, permitting carriers to bring the public the service it demands rapidly, efficiently, and at the lowest possible price.

**I. FIRST COME, FIRST SERVED COMBINED WITH A MARKET AREA LICENSING APPROACH IS CRUCIAL TO THE RAPID DEPLOYMENT OF PAGING SERVICE TO THE PUBLIC**

The commenters in this proceeding who oppose the Commission's first come, first served licensing approach have failed to see the forest for the trees. They base their objections on the misperception that first come, first served will disserve small companies, that existing systems will be unable to expand, and on speculation that a rule change would encourage petitions to deny and shift abusive conduct from mutually exclusive strike applications to the filing of blocking suburban/rural applications.<sup>1</sup> However, these protests overlook the Commission's broad objective of expediting service to the public and focus more on the exception than the rule. The alternatives offered by these commenters would have the ultimate effect of protecting individual competitors instead of fostering competition

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<sup>1</sup> Telocator Comments at 5; PacTel et al. Comments at 21; Metrocall of Delaware Comments at 7.

and would negate the Commission's overriding goal -- to bring service to the public as quickly as possible.

**A. First Come, First Served Licensing Should be Adopted**

Opponents of first come, first served appear to be bogged down in what they are used to, their vision clouded, perhaps, by fears of how such a licensing approach would alter their competitive positions. They recite the need to protect small companies, the potential for abusive petitions to deny and blocking applications, as well as concerns about expansion as reasons not to adopt the Commission's proposal. However, the approach taken by these commenters is anachronistic. They have failed to discern first come, first served's far-reaching, clear and simple effect -- it will satisfy consumer demand and expedite service to the public.

First, some commenters wrongly believe that such an approach will harm smaller competitors without long-range business plans.<sup>2</sup> This argument makes the false assumption that small companies have the luxury of expanding their service areas incrementally, a transmitter at a time, when they determine that the time is right and they can afford to do so. The Commenters imply that first come, first served will take away that luxury. To the contrary, however, no company now has that luxury -- the marketplace dictates what small companies must do to survive competitively. Paging is an intensely competitive and rapidly

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<sup>2</sup> Telocator Comments at 5; Comments of the U.S. Small Business Administration at 6.



growing industry whose market is characterized by burgeoning demand, rapid reductions in price, and steady improvement in service quality and coverage. In addition, the marketplace has forced all paging companies to provide, at an absolute minimum, wide-area paging service -- customers demand it. A "one stick" mom and pop company with a minimal service area simply cannot sell the number of pagers necessary to support its infrastructure. Thus, planning for and implementing expansion is necessary for economic survival. In major markets, mom and pop independents who cannot plan for expansion and improvements have sold out to companies that can make the investments necessary to provide wide-area paging.

Suggesting that first come, first served will harm smaller competitors completely ignores the realities of the marketplace. Under first come, first served, smaller competitors will have to do no more than what the market is forcing them to do -- come up with competitive plans and provide wide-area service. Moreover, first come, first served will reinforce carriers' incentives to understand consumer needs in their markets and potential markets. In some instances, small companies may be better able to discern those needs, based on their local nature and more hands on experience. It may well be that it is the larger companies like PageNet, who have regional and national coverage, who will face the greater challenges in determining their expansion plans. But that challenge is more than offset by the benefits to both carriers and the public that first come, first served licensing will bring.

In addition, the Commenters' focus on protecting individual competitors, like small companies, is misplaced. The goal of any regulatory scheme should be to provide service to end-users, not to protect individual competitors. Consistent with the mandate of the Communications Act, first come, first served focuses not on the needs of any particular carrier, but the needs of the end-user. The first come, first served approach recognizes that the public will best be served where carriers have incentives to "come to the table" with certainty about their business plans - it demands that carriers take an active role in influencing the growth and development of the paging industry to the benefit of the consumer, who will receive service more quickly. It preempts the ability of any entity to lie in wait for the competition to assess market potential and decide the right time to build, and then to file a mutually exclusive application. Carriers who want to build will have to do so or face the prospect that they will have to buy facilities from the market when they need them. Thus, first come, first served promotes the policy goal set forth in the Communications Act -- the rapid, efficient provision of service to the public.

Second, the concerns expressed by carriers concerning petitions to deny and blocking applications are ill-founded. These commenters overlook or ignore the fact that even under the current rules, blocking applications and petitions to deny are the rare exception rather than the rule, and the Commission can easily manage such anticompetitive conduct by making it clear to carriers

that such tactics will be futile.<sup>3</sup> Moreover, by imposing strict construction requirements, the Commission will create a significant disincentive to applications that serve nothing more than an anticompetitive purpose. These formidable requirements will also serve to control the number of applications the Commission receives for any given licensing area.

Finally a host of the commenters in this proceeding appear to have jumped on the same bandwagon, claiming first come, first served will limit carriers' ability to expand. In its Notice of Proposed Rulemaking ("NPRM") in this proceeding, the Commission invited comments on how its proposal would affect expansion,<sup>4</sup> but the comments filed in response are superficial. For the most part, they simply reiterate the Commission's own language (the intent of which was simply to raise the issue) and offer no substance or concrete examples of how first come, first served will disserve the public interest. First come, first served will not limit carriers' ability to expand to the detriment of the public. To the contrary, the public benefits where expansion is no longer limited by the speed with which the Commission is able to issue initial licenses. First come, first

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<sup>3</sup> Streamlined procedures for disposing of such initiatives have been developed for use in the FCC's Common Carrier Bureau (i.e., "Petitions to Reject or Suspend and Investigate"). Similar peremptory mechanisms could be used effectively to deal with blocking applications and strike petitions.

<sup>4</sup> NPRM at ¶ 10 ("Although our strong preference is to adopt the 'first come, first served' procedure, we note that this procedure could, in some instances, limit the opportunity for carriers to file applications to expand an existing system on an existing channel.").

served simply creates additional incentives for carriers to plan their expansion, if any, up front, and expedites the licensing process.

**B. First Come, First Served Should Be Part of a Market Area Licensing Scheme**

In adopting its licensing scheme, the Commission must recognize that there are significant efficiencies to be gained from the wide-area systems now created by expansion. Therefore, it is critical that the first come, first served approach be part of a market area licensing scheme.<sup>5</sup> PageNet set forth a comprehensive proposal for market area licensing of 900 MHz paging operations in its Comments filed in this proceeding,<sup>6</sup> and believes

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<sup>5</sup> In addition to PageNet, several other commenters recognize the value of area licensing and note that under such a scheme concerns with blocking applications and petitions to deny would cease to be relevant since licensees would be authorized to construct quickly and efficiently throughout an entire market area. Telocator Comments at 8; Metrocall Comments at 9.

<sup>6</sup> PageNet proposes that licenses be awarded for the 47 "Major Trading Areas" ("MTAs") defined in the Rand McNally Commercial Atlas and Marketing Guide (adding Alaska and Puerto Rico for a total of 49 regional licenses). Licenses would be granted on a first come, first served basis and new licensees would be protected from new applicants on a frequency for one year. New licensees (those applying to provide service within a geographic service area on a channel not yet licensed in that area) would be required to build out their systems to be capable of serving some percentage, perhaps 50%, of the population within those MTAs within one year. If a licensee failed to build out its system within one year, that licensee would be required to forfeit its license for that channel, returning the frequency to the available pool of frequencies, and that geographic service area would again be considered "unserved" as to that channel.

Existing licensees would be "grandfathered" into these MTAs.

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that geographic area licensing of such systems must be an integral part of any regulatory scheme designed to take the paging industry into the next century. Indeed, a market area licensing scheme is not a radical departure from tradition but the next logical step in the evolution of these services.

The Commission has recognized the public's demand for wide-area, regional and nationwide systems in the context of private carrier licensing as well as the importance of streamlining the licensing process for such services.<sup>7</sup> In proposing rules for the licensing of Specialized Mobile Radio (SMR) service as part of the 900 MHz Phase II proceeding, it described SMR systems covering several contiguous markets in

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Specifically, where one carrier is licensed within an MTA, it would be afforded one year to achieve the prescribed market coverage. If at the end of one year the licensee had not reached that level of coverage, the remaining portion of the MTA would be deemed unserved area subject to application by another carrier on a first come, first served basis. Where there is more than one incumbent licensed in the MTA, those existing licensees would be entitled to expand their service areas based on current 70-mile protection criteria, but no new applicants would be authorized for one year. After one year, areas within the MTA which the licensees did not then serve would be considered "unserved" and subject to application by others. Entities submitting applications to serve an MTA after the issuance of the Notice in this proceeding would not be grandfathered. This will avoid any possibility of a rush by prospective licensees to gain improper advantage as incumbents and avoid the proposed one year "build it or lose it" requirement.

<sup>7</sup> Notice of Proposed Rulemaking in PR Docket No. 89-553, 54 Fed. Reg. 744 (January 9, 1990), *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool and Modification of FCC Rule Section 90.627(b) Governing Multiple Sites for Specialized Mobile Radio Service Systems in Rural Markets* ("900 MHz Phase II proceeding").

central Florida,<sup>8</sup> noting that "wide area service seems to be a service the public demands."<sup>9</sup> It further concluded that

[g]rant of a license . . . within a designated coverage area, in our view, would be the most efficient and least burdensome method to achieve the desired results. Such grants would reduce the resources the Commission would have to dedicate to processing numerous applications and would decrease the number of lottery proceedings the Commission would have to handle.<sup>10</sup>

In addition, the Commission noted, "the public interest is served by facilitating the development of wide area . . . systems within the context of our Rules instead of forcing licensees to jump through regulatory hoops to achieve the systems they require."<sup>11</sup> What is true with respect to the licensing and operation of regional SMR systems is equally true in the paging industry.

The fastest growth in the paging industry has come from wide-area paging services; these services have accounted for much of the expansion in the industry since 1985, with annual growth rates ranging from 20 to 30 percent.<sup>12</sup> This trend is indicative

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<sup>8</sup> The Orlando, Tampa, Daytona Beach market area described by the Commission coincides directly with Rand McNally's MTA #7 in central Florida. See, PageNet Comments Exhibit A.

<sup>9</sup> Id. at para. 15.

<sup>10</sup> Id. at para. 17.

<sup>11</sup> Id. at para. 12.

<sup>12</sup> Roscoe & Wysor, Survey Shows Strong Growth in Paging Industry, Telocator, June 1990, at 14. I should be noted that forecasters began predicting this growth of regional systems several years ago. Bean, Paging Outlook 1995, Telocator, Jan. 1989, at 29 ("paging operators should position themselves regionally as well as nationally, offering high-quality coverage over large areas around the major cities served.")

of an increasingly mobile society. Urban sprawl has increased the distance covered by daily commuters. Over thirty million Americans take over 150 million business trips every year. As formerly separate geographic markets have coalesced, the nature of the paging industry has changed. Given the market, a local only pager makes about as much sense as a local only telephone. Thus, in order to sell even one pager these days, a carrier has to have, at a minimum, wide-area coverage.

Wide-area systems create cost efficiencies which are further enhanced in regional systems. The ability of carriers to meet the demand for local, regional, and national service in the most cost-effective manner is dependent on a common infrastructure. Thus, paging is most efficiently provided through the networking of various wide-area systems. Guaranteeing the use of a common radio channel throughout a geographic area enables paging receivers to be simple, lightweight, and inexpensive. In addition, the provision of service to a larger number of users spreads costs over a greater number of pagers and minimizes costs to the end-user.

A geographic licensing scheme for 900 MHz paging would assuage the concerns raised by opponents of first come, first served. Carriers would not be likely to apply for an MTA for purely anticompetitive reasons -- the impact of the Commission's proposed construction rules forces them to intend to build and operate a system within the geographic territory for which they file an application. It would not be in any carrier's best interest to file such an application simply to block expansion by

a competitor. Moreover, a market area licensing scheme preserves the economies of scale and scope offered by wide-area systems and allows a carrier to experience natural expansion throughout an MTA so it can continue to match the services it provides with the needs of its customers.

Area licensing by MTA would provide the pattern of licensing throughout the country by clearly defining the areas within which each carrier is authorized to "expand." Borders between authorized service areas would be easily discernible. Along those borders, construction of transmitters would be based upon the current 70 mile protection criteria, in order to avoid causing interference to co-channel operations in adjacent MTAs.<sup>13</sup>

The Commission has systematically encouraged the growth of the paging industry by allocating additional radio channels to paging services and formulating rules which encourage the larger and more effective use of 900 MHz frequencies in the public interest. As the demand for these frequencies continues to grow exponentially, the Commission must ensure that these channels are used in an effective and efficient manner to bring high quality service to the public. Therefore the Commission should adopt

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<sup>13</sup> In effect, by prohibiting construction of facilities within 35 miles of the boundary of an MTA, coverage requirements within a carrier's authorized MTA should be satisfied in most instances without risk of interference to an adjacent MTA operation. In rare instances where greater fine-tuning of the coverage area is required, the use of in-building radiation systems can be employed. Specially engineered, reduced-power operations could also be authorized on a case-by-case basis, if necessary.



first come, first served and a market area licensing approach in order to achieve this goal.

**II. THE COMMISSION SHOULD FURTHER REVISE ITS RULES TO FACILITATE THE RAPID AND EFFICIENT PROVISION OF PAGING SERVICE TO THE PUBLIC**

**A. The Commission Should Authorize the Use of Frequency-Agile Transmitters**

The record in this proceeding amply demonstrates that the benefits of using multi-frequency transmitters outweigh any concerns the Commission may have about spectrum warehousing. The commenters have offered explicit, concrete examples of how the use of such transmitters facilitates the introduction of additional services and creates both spectral and cost efficiencies.<sup>14</sup>

PageNet continues to urge the Commission, therefore, to adopt a rule that authorizes the use of these transmitters.

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<sup>14</sup> Telocator Comments at 34 (enhances variety of services carriers can offer, facilitates channel sharing, enhances geographic coverage); PacTel Comments at 28 (permits orderly expansion into outlying areas); Southwestern Bell Comments at 23 (permits multiple service offerings and increases flexibility in designing wide-area systems); SBA Comments at 19 (enables provider to offer local, regional and nationwide service concurrently, to provide enhanced services such as voice or text, and allows increased use of frequency sharing); Snet Paging Comments at 5 (fosters lower rates for paging service and additional services through investment of capital in expanding coverage rather than premature equipment purchases, conserves antenna tower space); Comments of SMR Systems, Inc. at 7 (permits frequency sharing, greater geographic coverage, additional services and enables carrier to establish standby facilities to enhance system reliability); Comments of Pac-West Telecomm, Inc. at 5 (promotes competition and spectrum efficiency in shared use systems); BellSouth Comments at 21 (enhances order and efficiency in 18 month build out cycle required for additional frequencies). See also, Metrocall Comments at 24; Page America Comments at 7, McCaw Cellular Communications Comments at 29.

In addition, PageNet supports the elimination of proposed rule Section 22.375 (current rule Section 22.119) which prohibits the use of a single transmitter for both public mobile and private carrier purposes. The effect of the rule is to increase costs borne by carriers, and ultimately the cost of services provided to consumers, without justification. It also creates artificial competitive disadvantages for common carrier service providers as against private carriers. As the number of licensees providing both common carrier and private carrier service simultaneously in the same area increases, and the distinction between RCC and PCP service becomes increasingly obscure, the limitation imposed by the rule represents a burden without compensating benefit to the public. PageNet therefore strongly recommends that the rule be eliminated.

**B. PageNet Concurs with the Majority of Commenters Who Support Automatic Termination of Licenses and Propose Revisions to the Ban on Refiling**

PageNet concurs with the Commission and the majority of commenters that authorizations should expire automatically, without further action by the Commission, where service has been discontinued as well as where the licensee fails to commence service in the time period required by the rules. PageNet believes that such a scheme is consistent with the Commission's goal of promoting the expeditious provision of service to the public. Numerous commenters point out, however, as did PageNet, that an absolute ban on refiling is not in the public interest. They suggest, and PageNet concurs, that the Commission should

allow for conditions outside of the licensee's control and clarify that the rule does not apply to instances where, prior to expiration, a carrier voluntarily returns its license because, for example, it has involuntarily lost a site and cannot relocate the facility. Under these circumstances, carriers should not be subject to a rule which would preclude them from refiling in the same area for one year.

**C.    The Commission Should Adopt a Finder's Application Procedure**

In its Comments, PageNet fully supported the Commission's proposal to adopt a finder's application procedure in the Public Mobile Services along the same lines as finder's preferences were recently implemented in the Private Radio Services. Those commenters in this proceeding who criticized the finder's preference voiced not so much their opposition to this proposal, but a need for clarification that the finder's application would comport with procedural due process as mandated by Section 316 of the Communications Act. PageNet agrees that the proposal needs clarification, but believes that the finder's application process has been and is easily made consistent with Section 316. Specifically, PageNet recommends the adoption of procedural safeguards similar to those contained in Section 90.175(k)(2) and (3) of the Commission's Private Radio rules with respect to disposition of mutually exclusive finder's preference applications, service on target licensees, and the requirement that the finder's application be submitted in the form of a sworn

affidavit or declaration pursuant to Section 1.16 of the rules. A waiting period of 180 days following the termination of the authorization, as required by Section 90.175(k)(2), would not comport with the Commission's intent here to expedite reassignment of channels and service to the public. Therefore, PageNet recommends that the Commission permit finder's applications to be filed immediately after the automatic termination of a license pursuant to Section 22.144.

**D. Key to the Commission's Regulatory Scheme  
is Clarification of its Rules Concerning  
Construction and Operation**

PageNet firmly believes, and the majority of commenters agree, that the Commission's proposed rules cannot achieve the goals set forth in its NPRM without a specific definition of "commencement of service to the public." Specific, explicit requirements are necessary to permit carriers to build and operate systems under the Commission's prescriptions, and to enforce the rules concerning automatic termination, refiling and finder's applications. Many commenters have proposed definitions, all taking into consideration the logistical realities faced by carriers in deploying systems. PageNet reiterates its belief, shared by numerous other commenters,<sup>15</sup> that the Commission must adopt a definitive standard which requires that a "constructed" facility be capable of the transmission and reception of signals between a base station and at least one associated pager through

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<sup>15</sup> See e.g., Telocator Comments at 15; PacTel Comments at 38; Metrocall Comments at 14; GTE Comments at 8.

the public switched telephone system. Its rule should specify that the facility be physically installed, interconnected and performing Section 22.313 station identification beginning on the expiration date of the construction permit, if not before. In addition, PageNet maintains that the best way to eliminate the problem of multiple, staggered expiration dates and uneven schedules for commencement of service to the public is to implement market area licensing of paging frequencies above 900 MHz.

**E. The Commission Should Retain Notification Requirements Only in Limited Circumstances**

Numerous commenters in this proceeding argue that the Commission must retain its Form 489 notification requirement for "fill-ins" and minor modifications in order that these facilities may be protected from interference. PageNet can think of no legitimate reason, however, to retain this requirement in instances other than those which result in a decrease in the outer composite service area contour. Attempting to retain the requirement for other changes is nothing more than a attempt by some carriers to be able to "snoop" on their competitors, and should be dismissed as such. Such a requirement serves no legitimate purpose and imposes an unnecessary strain on the Commission's resources.

**F. The Commission Should Limit the Duration of Conditions Placed on Licenses as an Adjunct to its Engineering Certification Rule**

PageNet, and virtually all those who commented on the issue, opposed the Commission's proposal to issue licenses that would be conditional on non-interference throughout the entire 10-year term of the initial license. Commenters cited difficulty in obtaining financing, disruption of service, devaluation of RCC operations, increased risks to licensees, and restraints on transferability of the licenses. They suggested reducing the period of time during which the condition would be effective. Periods of as little as 90 days to as much as two years were suggested.<sup>16</sup> PageNet continues to recommend reducing the term of the condition to six months commencing with completion of construction.<sup>17</sup> During that period the licensee could be required to cease operations until the problem is resolved. Subsequent to the six month conditional period, the Commission could order the station to modify its facilities, pursuant to Section 22.352 of the rules and Section 316 of the Communications Act, in order to eliminate the interference.

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<sup>16</sup> PacTel Comments at 25 (90 days); PageNet Comments at 39 and Metrocall Comments at 9 (6 months); SMR Systems Comments at 5, SNET Paging Comments at 5 and Radiophone Comments at 6 (1 year); CTIA Comments at 4 (1-2 years).

<sup>17</sup> PageNet agrees with the proposal by Telocator that the exact nature of the interference that will be considered objectionable must be clarified and should include only co-channel interference resulting directly from a demonstrated error in the engineering upon which the initial authorization was based, which is shown to have misapplied the curves, formulas or tables contained in the rules. Telocator Comments at 12.

**G. The Commission Should Modify its Proposed Rules  
Relating to Major and Minor Modifications**

PageNet and numerous other commenters objected to a number of proposed changes in the rules that would reclassify as major certain modifications of facilities which are now deemed to be minor. As proposed, the rules would require carriers to file and the Commission to process numerous applications for so-called "major" modifications, of which the Commission currently requires only notification by Form 489. PageNet continues to recommend revision of proposed Section 22.123 as set forth in its Comments to preserve as minor the classification of certain changes currently so classified.<sup>18</sup> In addition, PageNet strongly supports the proposal by Telocator to allow the move of a 931 MHz base station for a distance of up to 2 kilometers, and not closer than 70 miles to a co-channel licensee, without prior Commission approval.<sup>19</sup> This would afford much needed flexibility to licensees in the construction of multiple site systems where for unforeseen reasons a transmitter cannot be installed at the site

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<sup>18</sup> These include increases in service area beyond the composite authorized contour where the composite interference contour would not change (see, PacTel Paging, Inc., 6 FCC Rcd 5054 (1992)); substitution of a different control frequency in an application in order to resolve MX or other conflicts; correction of typographical errors with respect to coordinates; and replacement of one 900 MHz frequency with another as a minor amendment.

<sup>19</sup> Specifically, for moves of up to 2 kilometers, the filing of Form 401 would not be required and the Commission would be spared the burden of placing the applications on public notice and processing them to grant. Given the constraints proposed by Telocator, PageNet can think of no rational reason why the rules should require otherwise.

originally proposed and a nearby alternative site is available. Since such a move would require the filing of a major application under proposed Section 22.123(e)(1)(i)(B), where service is extended even the slightest amount into any new area, the resources of both the Commission and its licensees will be unnecessarily expended. PageNet urges the Commission, therefore, to allow for such minor relocations to be done on a notification basis, requiring only the filing of a Form 489.

Similarly, PageNet supports Telocator's proposal to permit relocation of existing control facilities up to a distance of 2 kilometers as a minor modification and to classify as minor any amendment requesting a relocation which would be minor if the proposed facility were an authorized station. Preserving critical control links is a high priority for licensees and flexibility to relocate quickly where a site is lost or interference is caused to or by a control station is of utmost importance. A rule which permits moves of up to 2 kilometers in such stations would reduce administrative burdens on the Commission both in processing the applications and in responding to requests for Special Temporary Authority. Such requests are often filed in order to prevent removal of service from potentially thousands of paging subscribers, which typically include critical care providers and public safety entities. PageNet recommends adoption of Section 22.123 as modified by Telocator.



**H. Form 489 Notifications Should Be Required When a Licensee Decreases its Composite Service Area Contour**

PageNet and numerous other commenters joined in supporting the Commission's proposal to allow 100% fill-in facilities to be constructed and operated without application or notification to the Commission. Overall, in addition, commenters expressed strong support for retaining the notification requirement where a transmitter is removed from service and the outer composite service contour of the system is decreased. PageNet agrees with this view and urges the Commission to modify the proposed rule accordingly.<sup>20</sup>

As a critically important related matter, PageNet reiterates its recommendation that proposed rule Section 22.165 be modified in order to preserve the current policy of allowing fill-in facilities to be based on authorized, as opposed to existing (i.e., operating), facilities. A change in the rules, as proposed in the NPRM, would eliminate an important element of flexibility in the way licensees are currently able to build out their systems. Specifically, for example, when an authorized site is found to be unavailable or undesirable, it is frequently possible to identify an alternative location where a transmitter may be installed on a 100% fill-in basis, based on the authorized facility now deemed to be unbuildable. In addition, licensees

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<sup>20</sup> PageNet also supports the proposal by Telocator and others to permit fill-in facilities, without prior Commission consent or notification, where the area within the interference and reliable service area contours of the proposed station is totally surrounded, but not necessarily covered by the interference and service contours of existing or authorized stations (the so-called "hole in the donut" situation).